that any award made in the nature of compensation for injury to the deceased's estate, should be deducted from any award made to the dependants, I assess the compensation, based on a dependency worth $100 p.m., at $13,000 on the basis of 100% liability. But as the deceased was equally to blame for his death, the award is accordingly reduced to $6,500 which I apportion as follows:—

Plaintiff, widow	...	$ 3,000
Teh Leong Chong, son	...	535
Teh Kim Inn, daughter	...	740
Teh Leong Hin, son	...	1,075
Teh Leong Tong, son	...	1,150.

The $3,000 is to be paid to the widow's solicitors; the children's shares are to be paid into court, pending further order or orders.

As regards costs, I decide after hearing argument that they are a matter within the discretion of the Court and in the circumstances of this case it is fair and just that the defendant should pay all the plaintiff's costs.

Order accordingly.

Solicitors: *Bannon & Bailey; George & Khoo.*

LIM CHENG v. SANDANAM

[A.C.J. (Hashim J.) April 3, 1962]

[Raub — Civil Appeal No. 1 of 1962]

Practice and Procedure — Failure to extract order of trial Magistrate — Technical flaw curable under R.S.C., O.59 r.4(1).

The failure to extract the order of the trial magistrate and the omission of the "decision" in the appeal record under O.XXXIX r.3(1)(d) of the Subordinate Courts Rules was a technical flaw which should be rectified by O.59 r.4(1) of the Rules of the Supreme Court.

PRELIMINARY OBJECTION.

Kam Woon Wah for the appellant.

Lall Singh for the respondent.

Cur. Adv. Vult.

Hashim J.: At the hearing of this appeal case Mr. Lall Singh for the respondent raised a preliminary objection, which, in my opinion, was a novel one. He contended that as the appeal record did not include "the decision" under Order XXXIX r.3(1)(d) of the Subordinate Courts Rules the appeal record was not complete and therefore the appeal should be dismissed. He further contended that the appeal should be dismissed on the second ground, namely that the appellant had failed to extract the decision given by the lower Court. Unfortunately, Mr. Lall Singh did not cite any authorities in support of both his contentions.

The procedure on appeal appears to be as follows:—

(a) The Notice of appeal shall be filed within 14 days from the day on which such decision was pronounced.

(b) The Court appealed from shall thereupon supply to the appellant, upon payment of the fee therefor, a certified copy of the judgment, or, in case no written judgment has been delivered, of the grounds of decision.

(c) The Court shall notify the appellant as soon as the certified copy is ready.

(d) The appellant shall within 14 days on receipt of the notification deposit in the Court a sum which in the opinion of the Registrar Sessions Court or the Magistrate, as the case may be, will cover the costs of preparing the appeal record and at the same time the appellant shall lodge in the Court $150.

(e) The Court *shall* then prepare the appeal record which *shall* contain copies of:

(i) the relevant pleadings,
(ii) the notes of evidence,
(iii) the grounds of judgment,
(iv) *the decision*,
(v) the notice of appeal,
(vi) all such documentary exhibits and other documents as the parties shall consider relevant for the purposes of appeal.

(f) As soon as the appeal record is ready the Court shall serve the appellant with a notice in Form 40.

It can be seen from (e) above that the appeal record shall contain "the decision". If "the decision" means the order of the trial Magistrate, it would appear that the order must be extracted before the Court can prepare the appeal record. The question for determination in this appeal is whether the failure to extract the order and the omission of the decision in the appeal record could mean that the appeal was not in order as it did not comply with the rules as laid down in Order XXXIX of the Subordinate Courts Rules and therefore the appeal should be dismissed. I think this is a matter of procedure and the appeal should not be dismissed for a technical flaw in the procedure. I think O.59 r.4(1) of the Rules of the Supreme Court should be applied in this case. The order of the trial Magistrate be extracted by the appellant and the appeal record be amended by including "the decision". Costs for the day to the respondent. The Assistant Registrar, Supreme Court, Raub shall fix a date for the hearing of this appeal case.

Order accordingly.

Solicitors: *Kam Woon Wah & Co.; Lovelace & Hastings.*

TRANSPORT & STORAGE LTD. v. YEO SUE TUAN & 71 ORS.

[D.C.A. (Rose C.J.) May 17, 1962]

[Singapore — District Court Appeal No. 22 of 1961]

Master and Servant — Claim for holiday pay and pay in lieu of annual leave under ss.46 and 47 of the Labour Ordinance, 1955 — Employees daily paid employed on rotation — Whether casual labour or continuously employed.

The respondents claimed holiday pay and pay in lieu of annual leave from their employers, the appellants, under sections 46 and 47 of the Labour Ordinance, 1955. The defence was that the respondents were casual labourers with no element of continuity of service and